

(E) The number of open option contracts in the account;

(F) The number of option contracts exercised.

(i)(1) For purposes of paragraphs (a), (f), (g) and (h) of this section, accounts classified as being "traded for other than speculative purposes" shall be limited to accounts of producers, processors, commercial users or merchants which handle the commodity which is the subject of the commodity-option transaction, or the products or by-products thereof, as part of their business.

(2) The term "option contract" as used in paragraphs (f), (g) and (h) of this section shall refer to either a call or a put on a specified weight of the underlying commodity.

(The information collection requirements contained in § 32.12 were approved by the Office of Management and Budget under control number 3038-0001; in paragraph (a) under control number 3038-0003)

[43 FR 23707, June 1, 1978, as amended at 43 FR 52469, Nov. 13, 1978; 43 FR 54226, Nov. 21, 1978; 46 FR 63036, Dec. 30, 1981]

§ 32.13 Exemption from prohibition of commodity option transactions for trade options on certain agricultural commodities.

(a) The provisions of § 32.11 shall not apply to the solicitation or acceptance of orders for, or the acceptance of money, securities or property in connection with, the purchase or sale of any commodity option on a physical commodity listed in § 32.2 by a person who is a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, if all of the following conditions are met at the time of the solicitation or acceptance:

(1) That person is registered with the Commission as an agricultural trade option merchant and that person's associated persons and their supervisors are registered as associated persons of an agricultural trade option merchant under § 3.13 of this chapter.

(2) The option offered by the agricultural trade option merchant is offered to a producer, processor, or commercial user of, or a merchant handling, the

commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, and such producer, processor, commercial user, or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such.

(3) The option cannot be off-set and, if exercised, must result in physical delivery of the underlying commodity; *Provided, however*, that nothing in this paragraph precludes amendment of the option contract's delivery date or the substitution of a forward contract agreement for the option contract prior to the option's expiration or exercise.

(4) To the extent that payment by the customer of the purchase price is made to the agricultural trade option merchant prior to option expiration or exercise, that amount:

(i) May only be used by the agricultural trade option merchant to purchase a covering position on a contract market designated under section 6 of the Act or part 33 of this chapter; and

(ii) Any amount not so used, shall be treated as belonging to the customer until option expiration or exercise as provided under § 32.6, *provided, however*, that notwithstanding the last proviso of § 32.6(a), the full amount of such payment shall be treated as belonging to the option customer.

(5) Producers may not:

(i) Grant or sell a put option; or

(ii) Grant or sell a call option, except to the extent that such a call option is purchased or combined with a purchased or long put option position, and only to the extent that the customer's call option position does not exceed the customer's put option position in the amount to be delivered. *Provided, however*, that the options must be entered into simultaneously and expire simultaneously or at any time that one or the other option is exercised.

(6) All option contracts, including all terms and conditions, offered or sold pursuant to this section shall be in writing, an executed copy of which shall be provided to the customer, and shall contain terms relating to the following:

(i) The procedure for exercise of the option contract, including the expiration date and latest time on that date for exercise;

(ii) The strike price(s) of the option contract;

(iii) The total quantity of commodity underlying the option contract;

(iv) The quality or grade of commodity to be delivered if the contract is exercised and any adjustments to price for deviations from stated quality or grade, or the range of, and a statement of the method for calculating, such adjustments;

(v) The delivery location if the contract is exercised;

(vi) The separate elements comprising the purchase price to be charged, including the premium, mark-ups on the premium, costs, fees and other charges; and

(vii) The additional costs, if any, in addition to the purchase price which may be incurred by an option customer if the commodity option is exercised, including, but not limited to, the amount of storage fees, interest, commissions (whether denominated as sales commissions or otherwise) and all similar fees and charges which may be incurred.

(7) Prior to the entry by a customer into the first option transaction with an agricultural trade option merchant, the agricultural trade option merchant shall furnish, through written or electronic media, a summary disclosure statement to the option customer. The summary disclosure statement shall include:

(i) The following statements in bold-face type on the first page(s) of the summary disclosure statement:

This brief statement does not disclose all of the risks and other significant aspects of trading in commodity trade options. You are encouraged to seek out as much information as possible from sources other than the person selling you this option about the use and risks of option contracts before entering into this contract. The issuer of your option should be willing and able to answer clearly any of your questions.

Appropriateness of Option Contracts

Option contracts may result in the total loss of any funds you pay to the issuer of your option. You should carefully consider whether trading in such instruments is ap-

propriate for you in light of your experience, objectives, financial resources and other relevant circumstances. The issuer of your option contract should be willing and able to explain the financial outcome of your option contract under all market conditions. You should also be aware that you may be able to obtain a similar contract or execute a similar risk management strategy using an instrument traded on a futures exchange which offers greater regulatory and financial protections.

Costs and Fees Associated With an Option Contract

Before entering into an option contract, you should understand all of the costs and obligations associated with your option contract. These include the option premium, commissions, fees, costs associated with delivery if the option is exercised and any other charges which may be incurred. All of these costs and fees must be specified in the terms of your option contract and must be explained in the transaction disclosure statement.

Business Use of Trade Options

In order to comply with the law, you must be buying this option for business-related purposes. The terms and structure of the contracts must therefore relate to your activity or commitments in the underlying cash market. If a trade option is exercised, delivery of the commodity must occur. Any amendments allowed to the option contract must reflect changes in your activity, in your commitments in the underlying cash market or in the carrying of inventory. Producers are not permitted to enter into short call options unless the producer is also entering into a long put option contract for the same amount or more of the commodity, at the same time and with the same expiration date. Producers are not permitted to sell put options, whether alone or in combination with a call option.

Dispute Resolution

If a dispute should arise under the terms of this trade option contract, you have the right to choose to use the reparations program run by the Commodity Futures Trading Commission or any other dispute resolution forum provided to you under the terms of your customer agreement or by law. For more information on the Commission's Reparations Program contact: Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418-5250.

Acknowledgement of Receipt

The Commodity Futures Trading Commission requires that all customers receive and

acknowledge receipt of this disclosure statement. The Commodity Futures Trading Commission does not intend this statement as a recommendation or endorsement of agricultural trade options. These commodity options have not been approved or disapproved by the Commodity Futures Trading Commission, nor has the Commission passed upon the accuracy or adequacy of this disclosure statement. Any representation to the contrary is a violation of the Commodity Exchange Act and Federal regulations.

(ii) The following acknowledgment section:

I hereby acknowledge that I have received and understood this summary risk disclosure statement.

Date

Signature of Customer

(8) Prior to entry by a customer into each option transaction with an agricultural trade option merchant, the agricultural trade option merchant shall furnish, through written or electronic media, a transaction disclosure statement to the option customer. The transaction disclosure statement shall include the following information:

(i) The procedure for exercise of the option contract, including the expiration date and latest time on that date for exercise;

(ii) A description of the elements comprising the purchase price to be charged, including the premium, mark-ups on the premium, costs, fees and other charges, and the services to be provided for the separate elements comprising the purchase price;

(iii) A description of any and all costs in addition to the purchase price which may be incurred by an option customer if the commodity option is exercised, including, but not limited to, the amount of storage fees, interest, commissions (whether denominated as sales commissions or otherwise) and all similar fees and charges which may be incurred;

(iv) Where the full option premium or purchase price of the option is not collected up front or where through amendments to the option contract it is possible to lose more than the amount of the initial purchase price of the option, a description of the worst possible financial outcome on the con-

tract that could be suffered by the customer; and

(v) The following acknowledgment section:

I hereby acknowledge that I have received and understood this transaction risk disclosure statement.

Date

Signature of Customer

(b) *Report of account information.* Registered agricultural trade option merchants must provide customers with open positions the following information:

(1) Within 24 hours of execution of an agricultural trade option, written confirmation of the transaction, including an executed copy of the written contract and all information required in paragraph (a)(6) of this section;

(2) Within 24 hours of a request by the customer, or 48 hours of a request for a response in writing, current commodity price quotes, all other information relevant to the customer's position or account, and the amount of any funds owed by, or to, the customer;

(3) Written notice of the expiration date of each option which will expire within the subsequent calendar month.

(c) *Recordkeeping.* Registered agricultural trade option merchants shall keep full, complete and systematic books and records together with all pertinent data and memoranda of or relating to such transactions, including customer solicitations and covering transactions, maintain such books and records as specified in §1.31 of this chapter, and make such reports to the Commission as provided for in paragraphs (c) and (d) of this section and as the Commission may otherwise require by rule, regulation, or order. Such books and records shall be open at all times to inspection by any representative of the Commission and the United States Department of Justice.

(d) *Reports.* Registered agricultural trade option merchants must file reports quarterly with the National Futures Association, in the form and manner specified by the National Futures Association and approved by the Commission, which shall contain the following information:

(1) By commodity and put, call or combined option:

(i) Total number of new contracts entered into during the reporting period;

(ii) Total quantity of commodity underlying new contracts entered into during the reporting period;

(iii) Total number of contracts outstanding at the end of the reporting period;

(iv) Total quantity of underlying commodity outstanding under option contracts at the end of the reporting period;

(v) Total number of options exercised during the reporting period; and

(vi) Total quantity of commodity underlying the exercise of options during the reporting period.

(2) Total number of customers by commodity with open option contracts at the end of the reporting period.

(e) *Special calls.* Upon special call by the Commission for information relating to agricultural trade options offered or sold on the dates specified in the call, each agricultural trade option merchant shall furnish to the Commission within the time specified the following information as specified in the call:

(1) All positions and transactions in agricultural trade options including information on the identity of agricultural trade option customers and on the value of premiums, fees, commissions, or charges other than option premiums, collected on such transactions.

(2) All related positions and transactions for future delivery or options on contracts for future delivery or on physicals on all contract markets.

(3) All related positions and transactions in cash commodities, their products, and by-products.

(f) *Internal controls.* (1) Each agricultural trade option merchant registered with the Commission shall prepare, maintain and preserve information relating to its written policies, procedures, or systems concerning the agricultural trade option merchant's internal controls with respect to market risk, credit risk, and other risks created by the agricultural trade option merchant's activities, including systems and policies for supervising, monitoring, reporting and reviewing trading activities in agricultural trade op-

tions; policies for hedging or managing risk created by trading activities in agricultural trade options, including a description of the types of reviews conducted to monitor positions; and policies relating to restrictions or limitations on trading activities.

(2) The financial statements of the agricultural trade option merchant must on an annual basis be audited by a certified public accountant in accordance with generally accepted auditing standards.

(3) The agricultural trade option merchant must file with the Commission a copy of its certified financial statements within 90 days after the close of the agricultural trade option merchant's fiscal year.

(4) The agricultural trade option merchant must perform a reconciliation of its books at least monthly.

(5) The agricultural trade option merchant:

(i) Must report immediately if its net worth falls below the level prescribed in § 3.13(d)(i) of this chapter and must report within three days discovery of a material inadequacy in its financial statements by an independent public accountant or any state or federal agency performing an audit of its financial statements to the Commission and National Futures Association by facsimile, telegraphic or other similar electronic notice; and

(ii) Within 5 business days after giving such notice, the agricultural trade option merchant must file a written report with the Commission stating what steps have been taken or are being taken to correct the material inadequacy.

(6) If the agricultural trade option merchant's net worth falls below the level prescribed in § 3.13(d)(i) of this chapter, it must immediately cease offering or entering into new option transactions and must notify customers having premiums which the agricultural trade option merchant is holding under paragraph (a)(4) of this section that such customers can obtain an immediate refund of that premium amount, thereby closing the option position.

(g) *Exemption.* (1) The provisions of §§ 3.13, 32.2, 32.11 and this section shall

not apply to a commodity option offered by a person which has a reasonable basis to believe that:

(i) The option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof;

(ii) Such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such; and

(iii) Each party to the option contract has a net worth of not less than \$10 million or the party's obligations on the option are guaranteed by a person which has a net worth of \$10 million and has a majority ownership interest in, is owned by, or under common ownership with, the party to the option.

(2) *Provided, however,* that §32.9 continues to apply to such option transactions.

[63 FR 18832, Apr. 16, 1998]

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

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SOURCE: 46 FR 54529, Nov. 3, 1981, unless otherwise noted.

§33.1 Definitions.

As used in this part:

(a) *Purchase price* means the total amount paid or to be paid, directly or indirectly, by a person to acquire a commodity option.

(b) *Promotional material* includes: (1) Any text of a standardized oral presentation, or any communication for publication in any newspaper, magazine or similar medium, or for broadcast over television, radio, or other electronic medium, which is disseminated or directed to an option customer or prospective option customer concerning a commodity option transaction; (2) any standardized form of report, letter, circular, memorandum, or publication which is disseminated or directed to an option customer or prospective option customer; and (3) any other written material disseminated or directed to an option customer or prospective option customer for the purpose of soliciting an option transaction, including any disclosure statement required by §33.7.

§33.2 Applicability of Act and rules; scope of part 33.

(a) Except as otherwise specified in this part and unless the context otherwise requires:

(1) Each board of trade designated, or applying for designation, by the Commission as a contract market for the purpose of trading commodity options pursuant to this part shall be deemed for such purpose to be a "board of trade," "exchange," and a "contract market" and, with respect to commodity option transactions conducted pursuant to such designation, shall comply with and be subject to all of the provisions of the Act relating to boards of trade, exchanges, or contract markets as though such provisions were set forth herein; and

(2) The provisions of sections 1a, 2(a)(1), 2(a)(8)(B), 4, 4a, 4c(a), 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4m, 4n, 5, 5a(a), 5b, 6, 6a, 6b, 6c, 7, 8(a)-(e), 8a, 8b, 8c, and 16 of the Act shall apply to commodity option transactions that are subject to the requirements of this part as though such provisions were set forth herein and included specific references to commodity option transactions. Nothing contained in this section shall be